

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**TROY F. FELTON, #0926198242,  
DAVID A. KIFER, #1002196075,  
TYLER NEAL JOHNSON, #201391**

**Plaintiff,**

**vs.**

**SHERIFF,  
DAVID WEDDING,  
BRUCE UNGETHEIM,  
CHERYL A. MUSGRAVE,  
BEN SHOULDERS, and  
JOHN/JANE DOE,**

**Defendants.**

**Case No. 19-cv-00662-JPG**

**MEMORANDUM AND ORDER**

**GILBERT, District Judge:**

This matter is, once again, before the Court for case management. This action was originally filed on June 18, 2019, by Plaintiffs Troy Felton, David Kifer, and Tyler Johnson, who are currently held at the Jefferson County Justice Center. (Doc. 1). The Court entered a preliminary order in this matter on June 27, 2019, ordering Plaintiffs Kifer and Johnson to advise the Court by July 25, 2019, if they did not wish to participate in this action. (Doc. 7, p. 6).

Plaintiff Johnson notified the Court of his desire to not proceed in this action by filing a Motion to Withdraw (Doc. 8) on July 8, 2019. Plaintiff Kifer also filed a Motion to Withdraw (Doc. 9) on July 9, 2019, and a Notice Opting Out of the Case (Doc. 10) on July 10, 2019. Their Motions (Docs. 8 and 9) are **GRANTED** and they will therefore be dismissed from this action without prejudice and without the imposition of a filing fee, pursuant to this Court's Order at Doc. 7.

Additionally, lead plaintiff, Troy Felton, filed a motion on July 10, 2019, asking the Court to correct the middle initial of his name in the case caption, dismiss the entire action, and waive the filing

fee. (Doc. 11). For the following reasons Plaintiff Felton's Motion is **DENIED** in part and **GRANTED** in part.

Plaintiff Felton's request to have his name corrected from Troy F. Felton to Troy D. Felton in the docket is granted. The Clerk of Court is **DIRECTED** to correct the docket to reflect Plaintiff's proper name.

As to Plaintiff Felton's request to dismiss the entire action, pursuant to Federal Rule of Civil Procedure 41(a), "a plaintiff may dismiss an action without a court order by filing: i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Here, Plaintiff Felton is within his rights to request a dismissal without prejudice, as defendants have not been served and no prejudice accrues to them. The Court therefore grants Plaintiff's request, and this action is **DISMISSED WITHOUT PREJUDICE**.

Plaintiff Felton, however, although he has dismissed his claims, must still pay the filing fee for this case. A prisoner incurs the obligation to pay the filing fee for a lawsuit when the suit is filed, and the obligation continues regardless of later developments in the suit, such as dismissal of the suit or denial of leave to proceed IFP. *See* 28 U.S.C. § 1915(b)(1), (e)(2); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). As such, to the extent his Motion requests waiver of the filing fee, such request is denied. Plaintiff Felton's Motion for Leave to Proceed *in forma pauperis* (Doc. 2) will be addressed in separate order.

**IT IS SO ORDERED.**

**DATED: 7/22/2019**

s/J. Phil Gilbert  
**J. PHIL GILBERT**  
**United States District Judge**